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Court of Appeal, First District, Division 5, California.

ESTATE OF Michael D.J. CHUANG, Deceased.  
Teresa Chuang, Petitioner and Appellant,  
v.  
Tina Chuang, Objector and Respondent.

(San Mateo County Super. Ct. No. PRO117013).  
| No. A126945. | Oct. 28, 2010.

## Opinion

JONES, P.J.

\*1 Michael D.J. Chuang (decedent) died of liver cancer in October 2007. As relevant here, his will left \$1 to one of his daughters, Teresa Chuang, and the remainder of his assets to the Bodhi Path Karma Kagyu Buddhist Centers of Oregon, Inc. (Bodhi Path). The decedent appointed his sister, Tina Chuang, executor of his estate.

Teresa contested the will on the grounds of undue influence and fraud; she also alleged the decedent was of unsound mind and lacked testamentary capacity.<sup>1</sup> During discovery, Teresa denied various requests for admission which, if admitted, would have resolved the case in Tina's favor. After Tina prevailed at trial, she moved to recover attorney fees and costs she incurred to prove the truth of the requests for admission Teresa denied. (Code Civ. Proc., § 2033.420.)<sup>2</sup> The trial court granted the motion and ordered Teresa to pay Tina's attorney fees and costs of \$106,121.32.

On appeal, Teresa contends the court should have denied Tina's motion because she "had reasonable grounds to believe that [she] would prevail on the matters at trial." We disagree, and we affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

The decedent was diagnosed with liver cancer in June 2007. Shortly thereafter, he retained an attorney, Terence Wong, to prepare a will. The decedent told Wong, " 'I don't want to leave anything to my kids. I want to leave them a dollar.' " In a July 2007 will prepared by Wong, the decedent devised his Charles Schwab retirement account in trust for the education of his sons, David and Justin; he devised \$1 to each of his other children, including Teresa. The decedent left the remainder of his estate to the Buddhist Wisdom Foundation.

In August 2007, the decedent hired another attorney, Henry Chuang, to prepare a revised will and on September 25, 2007, the decedent executed another will (September 2007 will). In it, he devised his Charles Schwab retirement account in trust for the undergraduate education of three of his children, David, Justin, and Grace. The decedent left \$1 to his two older children, including Teresa. He devised the remainder of his estate to Bodhi Path and named his sister, Tina, executor.

The decedent died on October 19, 2007. Before he died, he was living at a Buddhist temple in Menlo Park. The decedent is survived by his five children, including Teresa, and his five siblings, including Tina. Teresa contested the will on various grounds, including undue influence and fraud; she also alleged the decedent was of unsound mind and lacked testamentary capacity.

In January 2008, Tina propounded her first set of requests for admission. On February 14, 2008, Teresa denied the following requests in that first set:

"3. You presently have no knowledge of any fact to support the allegation ... that decedent's purported will lodged with the Court ... is not decedent's actual expression of his testamentary intent.

"20. You presently have no knowledge of any fact to support the allegation ... that decedent's siblings essentially isolated him ."

\*2 On February 20, 2008, Tina provided Teresa with Wong's declaration. In it, Wong averred that when the decedent signed the July 2007 will, the decedent: (1) had sufficient mental capacity to understand the nature of the testamentary act and remember and understand his relations to his children and those whose interests were affected by the will; (2) was not suffering from or showing symptoms of delusions; (3) was not suffering from a mental function deficit in alertness, attention, or information processing; (4) did not have a mental

function deficit that impaired his ability to understand and appreciate the consequences of his actions regarding the will; and (5) was not acting under mistake, fraud, or undue influence.

In April 2008, Tina provided Teresa with the declaration of the notary public who notarized the July 2007 will and with the declarations of the two subscribing witnesses. That same month, Tina served Teresa with Henry's declaration. In his declaration, Henry described in detail the circumstances surrounding the execution of the September 2007 will and averred that decedent was "of sound mind and mentally competent to make a[w]ill" in September 2007. Like Wong, Henry testified the decedent had sufficient mental capacity to understand the nature of the testamentary act, to understand and recollect the nature and situation of his property, and to remember and understand his relations to his children. Henry further testified the decedent was not acting under mistake, fraud, or undue influence when he signed the September 2007 will. Finally, Tina provided Teresa with the declarations of the notary public who notarized the September 2007 will and with the declarations of the subscribing witnesses.

In July 2008, Tina propounded a second set of requests for admission. On September 10, 2008, Teresa denied the following requests in the second set:

"42. Decedent was of sound mind when he signed the will.

"43. At the time of making the will, decedent had sufficient mental capacity to be able to understand the nature of the testamentary act.

"44. At the time of making the will, decedent had sufficient mental capacity to be able to understand the nature of his property.

"45. At the time of making the will, decedent had sufficient mental capacity to be able to understand the situation of his property.

"46. At the time of making the will, decedent had sufficient mental capacity to be able to recollect the nature of his property.

"47. At the time of making the will, decedent had sufficient mental capacity to be able to recollect the situation of his property.

"48. At the time of making the will, decedent had sufficient mental capacity to be able to remember his relations to those whose interests are affected by the will.

"49. At the time of making the will, decedent had sufficient mental capacity to be able to understand his relations to those whose interests are affected by the will.

\*3 "50. At the time of making the will, decedent was not suffering from a mental disorder with symptoms including delusions.

"51. At the time of making the will, decedent was not suffering from a mental disorder with symptoms including hallucinations.

"52. At the time of executing the will, decedent had no deficits in any of his mental functions.

"53. At the time of executing the will, decedent was alert.

"54. At the time of executing the will, decedent had the ability to process information.

"55. At the time of executing the will, decedent's thought processes were organized.

"56. At the time of executing the will, decedent had the ability to modulate his mood.

"57. At the time of executing the will, decedent had no mental function deficits which significantly impaired his ability to understand the consequences of his actions with regard to making the will.

"58. At the time of executing the will, decedent had no mental function deficits which significantly impaired his ability to appreciate the consequences of his actions with regard to making the will.

"59. There is no correlation between a deficit (if any) in the decedent's mental functions and the decisions made by the decedent with regard to the will.

"60. During the forty-eight (48) hour period immediately prior to decedent's execution of the will, no deficit (if any) in the decedent's mental functions was frequent. "61. At the time of executing the will, no deficit (if any) in the decedent's mental functions was severe.

“62. At the time of executing the will, decedent had the ability to communicate verbally his decision to make the will.

“63. At the time of executing the will, decedent had the ability to communicate by means other than verbally his decision to make the will.

“64. At the time of executing the will, decedent had the ability to understand the rights created by the will.

“65. At the time of executing the will, decedent had the ability to understand the probable consequences for the persons affected by the will.

“66. At the time of executing the will, decedent had the ability to understand the benefits of the will.

“67. At the time of executing the will, decedent had the ability to understand the alternatives involved in his decision to make the will.

“68. Tina Chuang did not unduly influence decedent with regard to the will.

“69. No person unduly influenced decedent with regard to the will.”

Following a four-day trial, the court found for Tina.<sup>3</sup> In its decision, the court described the overwhelming evidence refuting Teresa's claim that the decedent was “incompetent because he was under the influence of pain medication at the time he executed” the September 2007 will. The court also noted the absence of evidence to support Teresa's fraud and undue influence claims.

Shortly thereafter, Tina moved to recover \$106,121.32 in attorney fees and costs she incurred to prove the truth of the requests for admission Teresa denied. (§ 2033.420.) She argued Teresa lacked a good reason for failing to admit the requested admissions and did not produce any evidence at trial to support her denials. In opposition, Teresa urged the court to deny the motion “because ... at the time of making the denials [she] had reasonable grounds to believe that she would prevail on the matters at trial[.]”

\*4 The court granted the motion. In doing so, the court rejected Teresa's argument that she had a reasonable belief that she would prevail at trial. The court explained that the

evidence proffered by Tina before trial contradicted Teresa's “personal beliefs and established the facts which were the subject of the Requests for Admission. [Teresa] went to trial despite the proffered evidence and without any substantive contrary evidence.” The court also determined Teresa “did not have reasonable ground to believe that she would prevail on the matters” and “[t]here was no good reason for the failure to admit.” The court entered judgment for Tina.

## DISCUSSION

Teresa contends the court abused its discretion by awarding cost-of-proof sanctions pursuant to section 2033.420 because she had a reasonable belief she would prevail at trial. Teresa has the burden to demonstrate an abuse of discretion. (*Laabs v. City of Victorville* (2008) 163 Cal.App.4th 1242, 1275-1276 (*Laabs*); *Wimberly v. Derby Cycle Corp.* (1997) 56 Cal.App.4th 618, 637.) An abuse of discretion occurs where “the trial court exceeded the bounds of reason. [Citation.] It is a deferential standard of review that requires us to uphold the trial court's determination, even if we disagree with it, so long as it is reasonable. [Citation.]” (*Stull v. Sparrow* (2001) 92 Cal.App.4th 860, 864.)

Teresa claims she denied the requested admissions numbered 3, 20, 68, and 69 because she “had been very close to her late father and knew him intimately” and that Tina “was capable of unduly influencing [the decedent] to have him essentially omit his 5 children from his Will.” We disagree. It is not enough to “ ‘hotly contest’ the issue ... there must be some reasonable basis for contesting the issue in question before sanctions” pursuant to section 2033.420 “can be avoided.” (*Brooks v. American Broadcasting Co.* (1986) 179 Cal.App.3d 500, 511 (*Brooks*)). Teresa has not demonstrated her beliefs were reasonable nor has she established the court abused its discretion by concluding there was no good reason for Teresa's failure to admit the requested admissions, particularly where she did not produce any evidence at trial to support her fraud and undue influence claims.

Next, Teresa contends she denied the requested admissions numbered 42 through 67 because she had a “good faith belief that [she] could prevail through [her] attorney medical experts such as a[p]harmacologist and [p]harmacist to support and prove the adverse influence that all 5 of the pain medications had on” the decedent when he executed the September 2007 will. There are several problems with this argument. First, Teresa has not explained when she retained these experts

or what information these experts conveyed that gave her reasonable ground to believe she would prevail on her unsound mind and lack of testamentary capacity claims. Second, neither of these experts was deposed or testified at trial. Finally, Tina provided Teresa with evidence before she responded to the second set of requests for admission that demonstrated the decedent was of sound mind and possessed testamentary capacity.

\*5 We also reject Teresa's contention that she had reasonable ground to believe she would prevail on these claims because she reviewed the decedent's medical records before responding to the requested admissions and knew the pain medication the decedent was taking before his death affected his mental capacity. Before she responded to the requested admissions numbered 42 through 67, Teresa admitted she had not seen or reviewed the decedent's medical records; she also admitted she had no personal knowledge about the decedent's soundness of mind or mental competency at the time he signed the September 2007 will. With the exception of one prescription for morphine decedent's medical records are not part of the record. There is no information regarding when he took the morphine, or how much he took. And although the decedent may have been prescribed various pain medication, such as Fentanyl and Dilaudid, there is no information that he was taking those medications when he executed the September 2007 will. As a result, the court did not abuse its discretion when it determined Teresa lacked reasonable ground to believe she would prevail when she denied the requested admissions numbered 42 through 67.

Teresa relies on two cases to support her contention that the court abused its discretion by granting the motion. (*Laabs, supra*, 163 Cal.App.4th at p. 1277; *Brooks, supra*, 179 Cal.App.3d at p. 511.) In *Laabs*, a passenger injured in a car accident sued the City of Victorville (City), alleging her injuries were caused by a dangerous condition of public property. (*Id.* at p. 1247.) During discovery, the City propounded requests for admission asking plaintiff to admit, among other things, that the accident and plaintiff's injuries

were not caused by a dangerous condition of property owned or controlled by the City. (*Id.* at pp. 1275-1276.) The court granted the City's motion for summary judgment but denied the City's motion for costs and expenses pursuant to section 2033.420. (*Laabs, supra*, at p. 1247.) The appellate court affirmed. (*Id.* at p. 1247.) It concluded that the trial court could "have easily concluded that at the time plaintiff refused to admit such matters she reasonably held a good faith belief that she would prevail at trial on these issues." (*Id.* at p. 1277.) Teresa's reliance on *Laabs* is misplaced. In *Laabs*, the plaintiff produced evidence in opposition to summary judgment. Here, Teresa produced no such evidence at trial. As a result, the court did not abuse its discretion by granting Tina's motion pursuant to section 2033.420.

Nor does *Brooks, supra*, 179 Cal.App.3d at page 500, assist Teresa. There, the appellate court concluded the trial court's award of sanctions pursuant to section 2033.420 "was both proper and mandated." (*Brooks, supra*, at p. 511.) The court explained that the trial court "appropriately determined that there were no good reasons for the denial" of the requested admission, in part because counsel for the plaintiff "chose not to contest the issue at trial." (*Id.* at p. 512.) The same is true here. The court below properly determined "[t]here was no good reason for the failure to admit," particularly because Teresa did not provide evidence to support many of her claims at trial.

\*6 For the reasons discussed above, we conclude the court did not abuse its discretion by granting Tina's motion for attorney fees and expenses pursuant to section 2033.420. (*Brooks, supra*, 179 Cal.App.4th at p. 508.)

## DISPOSITION

The judgment is affirmed. Tina is awarded her costs on appeal.

We concur: SIMONS and BRUINIERS, JJ.

### Footnotes

- 1 We refer to the parties by their first names because they share a surname. Teresa has not included her objection to the will in the appellate record. Teresa's statements of "fact" are frequently expressions of argument, unsupported by authority in the record. As a result, "we do not accept [Teresa's] factual assertions and rely instead on [Tina's] statement of facts, which is supported by appropriate record references." (*Stasz v. Schwab* (2004) 121 Cal. App.4th 420, 424 & fn. 1; Cal. Rules of Court, rule 8.204(a)(1)(C).)

- 2 All further statutory references are to the Code of Civil Procedure. Section 2033.420 provides in relevant part, “If a party fails to admit the ... truth of any matter when requested to do so under this chapter, and if the party requesting that admission thereafter proves the ... truth of that matter, the party requesting the admission may move the court for an order requiring the party to whom the request was directed to pay the reasonable expenses incurred in making that proof, including reasonable attorney’s fees.” (§ 2033.420, subd. (a).) The trial court must make the order unless, among other things, “[t]he party failing to make the admission had reasonable ground to believe that that party would prevail on the matter.” (§ 2033.420, subd. (b)(3).)
- 3 The reporter’s transcript of the trial is not a part of the record.

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